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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Reexamination of the Comparative
Standards for New Noncommercial
Educational Applicants

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DOCKET FILE COPY ORIGINAL

MM Docket No. 95-31

JOINT REPLY COMMENTS OF APTS/NPR and NCE LICENSEES

The Association of America's Public Television Stations and National Public Radio ("APTS/NPR"), and the Arizona Board of Regents for Benefit of the University of Arizona, Board of Regents of the University of Wisconsin System, Kent State University, Nevada Public Radio Corporation, Northeastern Educational Television of Ohio, Inc., Ohio University, St. Louis Regional Educational and Public Television Commission and WAMC ("NCE Licensees") respectfully submit these joint reply comments in response to the comments filed regarding the Notice of Proposed Rulemaking in the above-captioned matter, released March 17, 1995 ("Notice").

Comments were filed by a number of parties, including groups representative of the noncommercial educational ("NCE") broadcast industry, as well as by a number of individual licensees. These comments nearly unanimously establish a common ground of agreement that embraces the key criteria set forth by APTS/NPR in their May 15, 1995 comments in this proceeding.¹ Therefore, APTS/NPR and the NCE Licensees submit that the

¹ These criteria reflect input from the National Federation of Community Broadcasters ("NFCB") and are a refinement of the criteria proposed by APTS/NPR in their 1992 comments, which were set forth by the Commission in its Notice for comment.

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criteria proposed in the APTS/NPR May 15 comments in this proceeding should be the basis for the Commission's adoption of revised comparative hearing criteria for NCE stations.

I. Nearly All Parties Are in Agreement on the Basic Principles Contained in the APTS/NPR Proposed Comparative Criteria

Nearly all the commenters agree that the new comparative hearing criteria should be based upon and foster goals underlying the purposes behind allocation of noncommercial educational spectrum.² Those goals include the provision of educational programming that is representative of the local community interests and needs, that increases the diversity of programming to the community, and provides service to the unserved or underserved.

While a few commenters state that the originally proposed APTS/NPR criteria, filed with the Commission in 1992, are too subjective and would prove unworkable, many of the criteria proposed by these commenters are essentially the same as the criteria proposed by APTS/NPR in their May 15, 1995 filing. For example, the comments of American Family Radio state that the criteria proposed by APTS/NPR in 1992 are "problematic" and "analogous to the matters invalidated in *Bechtel v. F.C.C.*"³ Yet, the first four criteria set forth by American Family Radio are virtually the same as those specified by APTS/NPR.⁴ Therefore, given this general consensus as to the appropriate basis for the NCE comparative criteria, APTS/NPR and the NCE Licensees

² See, e.g., Comments of NFCB at 1; NCE Licensees at 2; Ohio Educational Broadcasting Network Commission ("OEBNC") at 6; KCCU (FM) at 1-4; and KSBJ at 2-3.

³ See Comments of American Family Radio at 4.

⁴ *Id.* at 7. American Family Radio acknowledges, "Factors 1 through 4 are substantially in agreement with considerations suggested in the comments of APTS/NPR and/or NFCB." See also the Comments of Moody Bible Institute ("Moody Bible") at 4-5, 11-12; and Montgomery Christian Educational Radio, Inc. ("Montgomery Christian") at 3-4, 11-12.

urge that the Commission adopt the APTS/NPR criteria as the basis for any comparative NCE issue.

II. The NCE Criteria Should Include the Ability to Effectuate the Educational Mission of NCE Stations

Although the commenters agree generally on criteria fostering the principles discussed above, a few commenters, Moody Bible, Montgomery Christian, and Southwest Florida Community Radio, et al. (“Joint Religious Broadcasting Commenters”), omit any consideration of the core criterion that defines NCE stations—the educational mission of the stations. To the extent that this omission may indicate an intent to exclude this criterion, their position would conflict with long-standing FCC policies and rules. Recognizing the importance of using the mass media for noncommercial educational purposes, the Commission, in 1938, reserved FM spectrum for educational channels and, in 1952, reserved spectrum for 242 channels for educational television.⁵ The essence of this educational mission is embodied in the distinct requirements imposed by the FCC’s rules for noncommercial licensees. Thus, Section 73.621(a) provides that a noncommercial television license must be used “primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service.” See 47 C.F.R. § 73.621(a). Noncommercial radio licenses likewise are granted to provide a noncommercial broadcast service “for the advancement of an educational program.” 47 C.F.R. § 73.503(a). APTS/NPR’s proposal criteria reflect the core purpose of an educational license.

⁵ Sixth Report and Order on Television Assignments, 41 FCC 148 (1952).

Real Life would have the Commission completely ignore its own licensing requirements. It asserts that there is no distinction between the programming of noncommercial educational stations and commercial stations⁶ and suggests that the Commission should examine NCE applicants under the commercial comparative standards.

APTS/NPR and the NCE Licensees strongly oppose Real Life's position. It ignores the fundamental difference between noncommercial and commercial licensees—noncommercial broadcasters are freed from the economic necessity of serving mass audiences and thus can experiment with new and creative programming ideas, serve underserved or unserved audiences, and provide a variety and range of program services, such as in-depth news and public affairs programming, which commercial broadcasters are frequently not able to offer. To allow NCE broadcasters the ability to offer this kind and diversity of programming moved the Commission to set aside spectrum for noncommercial use and prompted Congress to provide financial support to public broadcasters.

Adoption of commercial criteria for use in the NCE setting would inevitably lead to an erosion of the distinct purpose of the NCE licensees—providing educational services to their communities. As APTS/NPR stated in their 1992 comments, while the NCE comparative criteria must be refined, it is essential that the goals behind the Commission's NCE comparative criteria remain protected. These goals embody the educational mission of NCE stations and ensure that applicants that can best meet the educational and cultural needs of the community will be chosen.⁷

⁶ See Comments of Real Life at 7.

⁷ Consideration of the educational nature of the programming proposed by an applicant is, as demonstrated above, consistent with the Commission's set aside of spectrum for noncommercial educational use. As Sections 503 and 621 of its Rules make clear, reserved

III. The NCE Comparative Criteria Should Emphasize Program Diversity Not Ownership Diversity

Three of the commenting parties put forward ownership diversity as an NCE comparative criterion.⁸ As discussed thoroughly by APTS/NPR in its 1992 and May 15, 1995 comments, to ensure diversity of voices and views, the Commission should emphasize programming diversity, not ownership diversity.

First, consideration of diversity of ownership in noncommercial comparative cases is not necessary to achieve the Commission's purposes of promoting diversity of programming and viewpoint. All NCE stations, including those licensed to multiple station licensees, are inherently committed to achieving programming diversity and offering programming not otherwise found in the marketplace. Embedded in the Public Broadcasting Act of 1967, which provided for the structure and funding of public broadcasting, is a fundamental obligation to provide diverse programming that addresses the needs of different audiences. In the past half century, public broadcasting licensees have demonstrated their commitment to providing this diverse array of programming and viewpoints. Indeed, NCE broadcasters exist solely to serve the educational and cultural needs of their communities. Serving the public interest is not a secondary goal after earning a profit or even a co-equal objective; rather, it is the NCE licensees' only goal.

spectrum is to be used for educational purposes and the Commission's reliance on the educational nature of the program service in selecting among competing applicants enhances the prospects that the spectrum will be used for its intended purpose.

⁸ See Comments of NFCB, Real Life, and Joint Religious Commenters.

This commitment is also reflected in the funding criteria used by the Corporation for Public Broadcasting. Licensees with more than one station are required to provide separate and distinct program services to obtain multiple community service grants. Therefore, licensees with more than one station in a market typically provide different program services over each station—one offering standard public broadcasting fare, the other providing alternative programming, frequently for smaller audiences and groups.⁹

Moreover, making diversity of ownership a comparative criterion—and thereby penalizing noncommercial applicants because they own other noncommercial stations—is likely to reduce program diversity by undermining the economic efficiencies essential to the provision of noncommercial service. The Commission has frequently recognized, in both the commercial and in the noncommercial context, that common ownership of broadcast stations affords operational efficiencies that inure to the public interest, including facilitating the ability of licensees to offer a diverse programming. Common ownership of stations enables NCE licensees to use common studios and common administrative, fundraising, engineering and other core personnel. Operation of multiple stations also permits NCE licensees to use the revenues generated by one station, which might carry more of the mainstream programming that generates most of a licensee's private revenue, to support the activities of the other. Further, in the case of state networks, ownership of multiple facilities is the only way that public radio and television service can be provided to rural areas.

⁹ For example, WGBH Educational Foundation, licensee of WGBH-TV and WGBX-TV, Boston, programs the two stations very differently, with WGBH broadcasting general audience public television programming, including a substantial amount of children's programming, and WGBX broadcasting real-time coverage of the state legislature, in-school instructional programming, college telecourses, and documentaries and public affairs programming directed to discrete audiences in its service area.

Permitting public broadcasting entities flexibility to adopt operational efficiencies is even more important, given the current federal funding environment. In fact, in response to the desire of the current congressional leadership to reduce direct federal funding for public broadcasting, APTS and NPR have submitted a funding plan to Congress that proposes additional on operational efficiencies, including appropriate station consolidations.

Thus, while in certain contexts diversity of ownership may promote diversity of viewpoints, the opposite is likely to be the case in the context of noncommercial applicants. Consequently, penalizing applicants who own other broadcast facilities in NCE comparative proceedings is unlikely to promote the goals of a diverse, economically healthy and responsive NCE broadcast service.¹⁰

IV. The Commission Should Reject the Suggestion that It Credit Private Over Public Funding

Moody Bible and Cedarville College propose that an application based on private funding should be favored over one based on public funding. These parties contend that if the source of the funding is public, through state and/or federal moneys, the funding is less stable than if the source of the money is private. APTS/NPR and the NCE Licensees disagree.

First, the source of funding is irrelevant. If an applicant can demonstrate that it has the financial ability to carry forth its proposed plans of operation, whether its sources include public funding has no bearing on its

¹⁰ Diverse ownership will facilitate a diversity of voices only if the market will support the separate stations, with their separate overhead. As the history of public broadcasting has shown, the marketplace will not support public broadcasting operations or the programming it offers. Thus, given the economic imperatives of NCE broadcasting, the Commission cannot rely on diversity of ownership as a means to promote diversity of viewpoints for noncommercial applicants.

financial ability. Second, the contentions raised in these comments are premature. Federal and state funding of public broadcasting stations still exists. While the current leadership in Congress has expressed a desire to reduce direct federal authorization and appropriation, it has asked public broadcasters to identify alternative funding mechanisms.¹¹ Third, regardless of what may happen on a federal level, a number of states remain committed to their public broadcast operations and are continuing to support them. Finally, such a policy is contrary to the existing congressional policy established in the Public Broadcasting Act of 1967—that federal funding of public broadcasting is a priority of our nation.

Therefore, APTS/NPR and the NCE Licensees request that the Commission reject this irrelevant and clearly self-serving suggestion.

V. The Point System Should Not Be Adopted

The overwhelming majority of commenters in this proceeding agree that the Commission should not adopt a point system for assigning values to comparative criteria. Only three parties suggest a point system is appropriate.¹² Even the original proponent of the point system, NFCB, has decided, upon further consideration, that “such a system would not adequately determine the best qualified applicant” and, rather, “case-by-case consideration of each of the applicable criteria will more likely result in choosing the applicant that will best serve the public interest.”¹³ APTS, NPR, the NCE Licensees and NFCB agree that the comparative criteria necessary to

¹¹ Indeed, the APTS/NPR plan recently submitted to Congress proposes a private trust fund intended over time to replace the federal authorization.

¹² See Comments of Moody Bible, Montgomery Christian, and KSBJ.

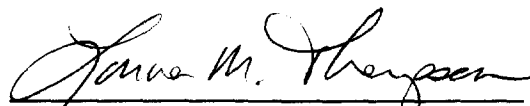
¹³ See Comments of NFCB at 2.

evaluate NCE applicants do not lend themselves to simple quantification. As noted in the APTS/NPR Reply Comments in GC Docket No. 92-52, use of a point system will deprive the Commission of the ability to address the merits of a creative proposal. Therefore, APT/NPR and the NCE Licensees urge the Commission to adopt the views of the majority of the commenters in this proceeding and decline to adopt a point system.

Conclusion

For the reasons set forth above APTS/NPR and the NCE Licensees respectfully request that the Commission adopt the comparative criteria proposed by APTS/NPR in their May 15, 1995 comments in this proceeding. These criteria will allow the Commission to select the noncommercial educational applicant that will best serve the educational and cultural purposes for which noncommercial licenses are granted.


Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lonna M. Thompson", is written over a horizontal line.

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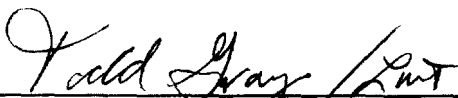
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Certificate of Service

I, Lonna M. Thompson, certify that I have, this 7th day of June 1995, caused to be delivered via postage-prepaid, first class, U.S. Mail, the foregoing Reply Comments of the ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS AND NATIONAL PUBLIC RADIO, AND ARIZONA BOARD OF REGENTS FOR BENEFIT OF THE UNIVERSITY OF ARIZONA, BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, KENT STATE UNIVERSITY, NEVADA PUBLIC RADIO CORPORATION, NORTHEASTERN EDUCATIONAL TELEVISION OF OHIO, INC., OHIO UNIVERSITY, ST. LOUIS REGIONAL EDUCATIONAL AND PUBLIC TELEVISION COMMISSION AND WAMC, to the following:

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